

UPDATE ON CHILDREN'S BILL

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(UCT)

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SUMMARY

In late 2004, the Social Development Portfolio Committee (PC) started deliberating on the Children's Bill. After the public hearings and briefings by all the relevant government departments, the PC identified a number of policy issues that they needed answers on. The Inter-departmental Steering Committee (Steering Committee) was asked to meet and then come back in early 2005 with clarity on these policy issues. The Steering Committee had two meetings in December and January, to consider the gaps in current policy and legislation; propose a collective government response; and reach consensus on the roles and responsibilities of each department.

Contributions to this process were made by the following departments: Home Affairs, Justice, Presidents Office (ORC), Labour, Education, Correctional Services, SAPS, Land Affairs, Health and Housing. Their response has been summarised in a matrix prepared by Ronel Van Zyl, the chief drafter of the Bill.

Please go through the matrix and check to see whether you need to respond to the different Department's policy positions on the areas that affect your sub-sector.

GRANTS

Concerns were raised about fraudulent claims for Child Support Grants. Mike Masutha (ANC) asked the department if it had investigated the use of fingerprinting of babies to prevent fraud. The Committee is also concerned about people misusing the Child Support Grant.

Comment: A number of questions were asked about grants and it is clear that committee members do not understand the grants system.

The DSD will brief the PC on Tuesday 01 Feb specifically on the topic of social security. See the matrix for the DSD's position on grants. They basically say that grants are the business of the social security directorate within the department and should not be dealt with via the Children's Bill. They go so far as to say that the idea of an adoption grant is something that the social security directorate will decide on and not something that should be addressed in the Children's Bill. They put forward a position that policy decisions about children's grants belong in a separate process and are not part of the Children's Bill. The exception is the idea of court-ordered kinship care which they propose should be created in the Children's Bill. The Social Security directorate is proposing a process to review all children's grants.

Comment: This trend of saying that an issue needs more investigation or a separate policy process is coming up in a number of policy areas. With regards to social security for children, so far there have already been two policy review

processes where reform with regards to children's grants was proposed (Committee of Inquiry into Social Security in 2001 and the SALRC Review of the Child Care Act) yet still there is no finality on where and when the reform will happen and the DSD is now proposing a third process.

CHILDREN'S PROTECTOR

Both the Public Protector and the SAHRC have rejected the possibility of housing the Children's Protector within their offices, due to lack of finances, mandates and capacity. Justice proposed that the new Human Rights Unit in the Department of Social Development liaise with the specific unit in the Department of Justice that deals with the Chapter 9 institutions, to co-ordinate work on Human Rights. Mike Waters (DA) noted that the Children's Protector has been dismissed on the grounds of cost, and enquired as to the monetary cost of having the Children's Protector. Would the money being spent on setting up a Human Rights Unit in the Department of Social Development be better spent on a Children's Protector? He asked if the Children's Protector would be better placed to ensure that children get the services they deserve.

CHILD PROTECTION REGISTER

The Department of Justice has received a policy directive from the Deputy Minister of Justice, about the issue of the two registers contained in the Children's Bill and the Sexual Offences Bill. The Deputy Minister feels strongly that there should be two separate registers. Although, the Children's Bill register is broader, the Sexual Offenders Register is extremely necessary.

This will be deliberated by the Justice Committee, but it was proposed that the two committees work together on the issue. Mike Waters (DA) feels that a Sexual Offences Register is too limited as only 4% of rape cases result in conviction.

However, see the matrix where it is proposed that both parts of the register be located in the Children's Bill and that the register be removed from the Sexual Offences Bill.

This debate will continue next week as the PC tries to negotiate between the two different Bills and policy positions by the Dept of Justice and DSD.

PARENTAL RIGHTS AND RESPONSIBILITIES

The committee is struggling with this issue. Mike Masutha (ANC) brought up the possibility of introducing the concept of emancipation.

The Department of Justice has taken a policy position that the High Courts retain exclusive jurisdiction over the determination of guardianship. They are of the opinion that guardianship matters cannot yet be decided by magistrate's courts because they are not trained on the issue.

Comment: The retention of the HC's exclusive jurisdiction over guardianship has serious negative implications for the many caregivers trying to protect orphan's property interests.

INTER-COUNTRY ADOPTIONS

The committee is concerned about inter-country adoptions, but there is general consensus that the incorporation of the Hague Convention, as per Chapter 17, will address these concerns, however they would like a strict fee structure introduced to stop incentivising the practice.

NPF

Mabel Rhantla of the ORC suggested that the ORC was best placed to co-ordinate integrated implementation because of their executive authority over all departments. In a private interview, Maria Mabetoa said that the DSD should be responsible for co-ordinating implementation because the ORC does not have the capacity.

Comment: There is still a strong need to convince committee members and departmental officials that the NPF should be in the Bill. Hendrietta Bogopane-Zulu (ANC) argued in her meeting with Shani Winterstein (LHR) that one of the problems is that there is no example to follow. Ronel van Zyl also asked for precedents from other legislation, especially precedents that deal with co-ordination across different departments.

The latest news is that Mabel Rhantla is apparently no longer the Director of the ORC because Thoko Makwanasi-Xaluva is going to be reinstated.

PROGRAMME AND HOT TOPICS

Tuesday 01 Feb:

- Briefing by the Department of Health to respond to issues identified,
- Briefing by DSD Social Security Directorate, including an input as to when amendment to Social Assistance Act will be passed.

Wednesday 02 Feb:

- Briefing by the Department of Justice. Justice PC members are to be invited. Key issues for consideration are the Child Protection register in the Children's Bill versus the Sexual Offences Register in the Sexual Offences Bill and whether there is a need for both registers or just one.
- Masters Office has been requested to present on the administration of deceased estates.

Thursday 03 Feb:

- Technical briefing by the Department of Social Development drafter on the structure of the Bill. Ronel van Zyl is expected to go through the Bill clause by clause, including the re-incorporation of s76 clauses that have been re-tagged as Section 75 issues. This process will continue on the following days.

Friday 04 Feb
Tuesday 08 Feb
Wednesday 09 Feb
Thursday 10 Feb

For more information please contact Lucy Jamieson (lucy@rmh.uct.ac.za or 021 - 689 8303) or Paula Proudlock (paula@rmh.uct.ac.za or 021 – 689 5404). The minutes of the PC are also available on the PMG website on www.pmg.org.za if you want more details. Please review the attached matrix for detail on other policy questions not mentioned in this summary.